

CONSERVING OPEN SPACE AND HISTORIC RESOURCES THROUGH EASEMENTS

Fairfax County, Virginia In Partnership with the Northern Virginia Conservation Trust (NVCT)

The Fairfax County Open Space/Historic Preservation Easements Program is committed to helping owners protect open space, historic resources, scenic vistas, and sensitive natural areas on their property, enabling these resources to remain in private ownership. Donating a perpetual easement may qualify for certain federal, state and/or local tax benefits. In addition, donating a perpetual easement can be beneficial in terms of estate taxes for passing on land or a treasured historic, scenic, or natural resource intact to the next generation. An easement is implemented through a deed of easement conveyed by the property owner to an easement-holding organization such as a private land trust or a government entity.

The Fairfax County easements program is a public-private partnership with the Northern Virginia Conservation Trust (NVCT), a private non-profit land trust. This partnership enables property owners to work either with a private organization or the County to preserve their property. Other entities hold easements as well, such as the Fairfax County Park Authority, various State agencies, and other land trusts such as the Potomac Conservancy. Property owners always have the option to work with one of these other preservation groups, rather than through the County program.

Open space/historic preservation easements allow individual landowners to permanently protect their land or historic structure while continuing to own and enjoy it. Because these easements are generally perpetual and run with the land, the terms of the easement bind the current property owner, heirs, and those who purchase the property in the future.

WHAT IS AN EASEMENT?

If you own property, you own what is called a fee simple interest. This interest can be compared to all the rights that pertain to your property. They include such rights as the right to build and the right to do anything you want on your property that is not prohibited by law. By granting an easement, you give up certain rights or transfer them to someone else. The rights you choose to forego are specifically set out in a deed of easement and only those rights are affected. You and your attorney draft the deed, consulting with NVCT and/or appropriate County staff. Depending on specific circumstances, the easement may be held by either by NVCT or the Fairfax County Board of Supervisors, or jointly by both.

The deed of easement is tailored to reflect the special characteristics of your property that need to be protected through an easement and to meet your personal needs. An easement on property containing rare wildlife habitat might prohibit development of any kind, while an easement on a farm might allow continued farming and the building of additional agricultural structures. An easement on your historic house could permit you to continue to live in the house, but changes to the external appearance, as well as construction of additions or new buildings, might require approval by the Fairfax County Architectural Review Board.

WHAT ARE THE TAX BENEFITS OF DONATING AN EASEMENT?

If you are considering donating an easement, you should consult your own legal and financial advisors to determine if the easement donation might qualify for any federal, state and/or local tax benefits.

Federal Income Tax Credit: A perpetual easement donation that meets federal tax code requirements, in essence an easement that provides public benefit by permanently protecting important natural, scenic and historic resources, may qualify as a tax-deductible charitable donation. Generally speaking, the value of the donation is the difference between the land's value with the easement and its value without the easement, as determined by an independent appraisal.

State Income Tax Credit: Under the Virginia Land Conservation Incentives Act of 1999, qualifying perpetual easements donated after January 1, 2000, may enable the owner to use a portion of the value of that gift as a state income tax credit.

Estate Tax Benefits: An easement can be essential for passing on land or a treasured historic, scenic, or natural resource intact to the next generation. By removing the land's development potential, the easement lowers its market value, which in turn lowers the estate tax. In addition, the federal Taxpayer Relief Act of 1997 allows up to 40 percent of the value of eased property to be excluded from the estate for tax purposes if certain requirements are met.

County Real Estate Tax Benefits: If the Board accepts a perpetual easement that lowers the market value of the property, then County real estate taxes for that property may be reduced.

DOES THE EASEMENT OPEN THE DONOR'S PROPERTY TO THE PUBLIC?

No. The land or historic structure remains private property. An easement does not give the public access to your property unless you specifically grant it.

DOES THE EASEMENT NEED TO MEET SPECIFIC CRITERIA?

Yes. The Code of Virginia authorizes the Board of Supervisors, as a local government, and NVCT, as a non-profit land trust, to accept easements if they conform to the County's Comprehensive Plan. The Policy Plan volume of the Comprehensive Plan contains guidance on the conservation of open space, as well as natural, scenic, and historic resources.

Board of Supervisors' policy states that only perpetual easements will be considered, unless special circumstances warrant accepting a less-than-perpetual easement to save a threatened resource.

WHAT ARE THE STEPS IN DONATING AN EASEMENT?

Creating an easement: A landowner may choose to work with Fairfax County through the Northern Virginia Conservation Trust (NVCT). As an alternative, a property owner may choose to work with any other non-profit land trust that is qualified to hold easements under state or federal law. The property owner and the staff person work together to draft a deed of easement. When this is signed, it is filed with County land records and is part of the legal records related to the property. The terms of the easement are in effect for all subsequent property owners.

HOW WILL THE EASEMENT BE ENFORCED?

The deed of easement will contain provisions regarding the right of the easement holder to inspect the property and enforce the terms of the easement as provided by law.

I WANT TO KNOW MORE. WHOM DO I CALL?

The County's Easement Coordinator provides general information about easements. Staff of the Northern Virginia Conservation Trust also can provide general information, but will also work with the property owner to carry out the background research and develop the deed of easement.

Fairfax County: The County's Easements Coordinator at the Department of Planning and Zoning, Planning Division, (703) 324-1380. Office hours are 8:00 a.m. to 4:30 p.m. weekdays.

Northern Virginia Conservation Trust: (703) 354-5093 . Office hours are 9:00 a.m. to 5:00 p.m. weekdays.

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